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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/605,133	09/10/2003	John A. Boticki	JD-211-US	2132

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EXAMINER

ORMAN, DARREN W

ART UNIT PAPER NUMBER

3752

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/605,133

Applicant(s)

BOTICKI ET AL.

Examiner

Darren W. Gorman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 January 2005 and 09 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10-16 is/are rejected.
- 7) ☒ Claim(s) 8, 9, 17 and 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 02/09/2005
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

1. The IDS filed on February 9, 2005 is hereby acknowledged and has been placed of record. Please find attached a signed and initialed copy of the PTO 1449.

Examiner's Notes

2. The following formal matters in the claims were noted by the Examiner:
 - Examiner respectfully suggests that claim 12 should be dependent from claim 11, rather than from claim 10, since proper antecedent basis for the recitation "the rib members" is located in claim 11.
 - Examiner respectfully suggests that claim 15 should be dependent from claim 14, rather than from claim 7. Claim 7 includes the limitations of claim 6, and claim 6 is identical to claim 15, rendering claim 15 improper for not further limiting claim 7.

The claims will be treated as incorporating the above suggestions.

Response to Arguments

3. Applicant's remarks/arguments filed January 20, 2005 with respect to claims 1 and 10 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-6 and 10-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Tada, USPN 4,350,298.

Tada shows a combined spray and foam nozzle (see Figures 11-13) comprising: a spray nozzle (242), a foam nozzle (262) frictionally attached via threads (256, 258) to the spray nozzle, the foam nozzle including: a tubular member having one end portion fit over an end portion of the spray nozzle (see Figure 11), a foam producing member (261, 264) located in an opposing end portion of the tubular member, and at least one air passageway extending into the tubular member and terminating upstream from the foam producing member, the air passageway extending over a portion of the spray nozzle (see Figure 11). Tada further shows the device wherein the foam producing member is defined by a plurality of radially extending rib members (264) and includes a centrally positioned wall portion (261) with the rib members extending radially therefrom (see Figure 12), the foam producing member being positioned inwardly from the outermost end portion of the opposing end portion of the tubular member (see Figure 11). Further, Tada shows the device wherein the air passageway comprises a spacing between an end face (272) of the tubular member and an end face (273) of the spray nozzle and a plurality of

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channels (270), the channels being equidistantly spaced from each other and communicating with the spacing (see Figures 11 and 13).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 7 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tada.

Tada shows all of the claimed limitations as set forth in claims 6 and 15, and Tada further expressly states that the air passageway may take various forms and further states that the two channels members shown in Figure 13, is but one example (see column 7, lines 53-57). However, Tada is silent as to an example wherein there are four channel members.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form four channels members spaced equidistantly from each other in the device of Tada in order to induce a larger quantity of air into the tubular member for better foam generation, and since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPA 8.

Allowable Subject Matter

8. Claims 8, 9, 17 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

NOTE: Should Applicant rewrite the aforementioned claims into independent form, Applicant's attention is directed to dependent claims 5-7 and 14-16, which include limitations of an embodiment that are mutually exclusive from the embodiment recited in claims 8, 9, 17 and 18. Appropriate amendments to the claims or cancellation of these claims should therefore be made to avoid potential indefiniteness issues.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

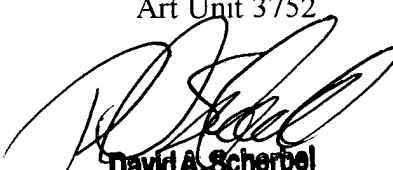
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Gorman whose telephone number is 571-272-4901. The examiner can normally be reached on M-F 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on 571-272-4901. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Darren W Gorman
Examiner
Art Unit 3752

DWG 6/1/05
DWG
June 1, 2005


David A. Scherbel
Supervisory Patent Examiner
Group 3700